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DIGEST OF WATER POLLUTION CONTROL LEGISLATION ... NORTH CAROLINA

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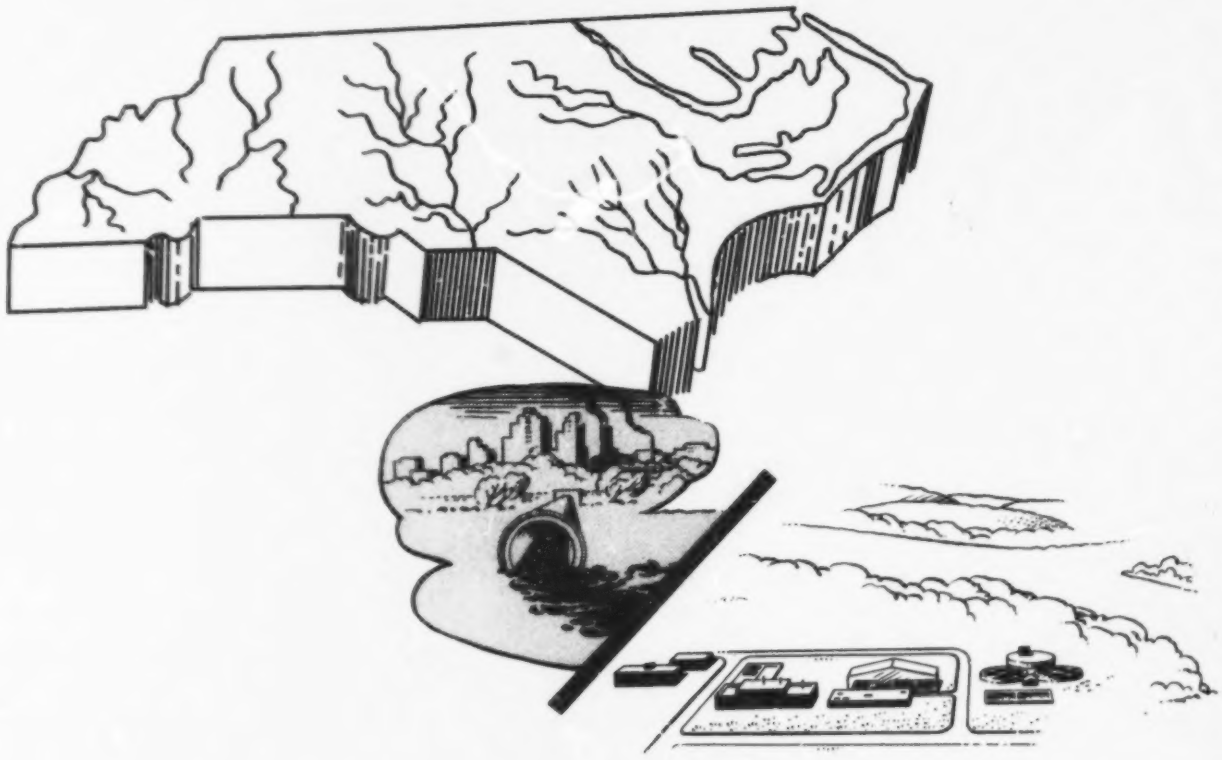

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U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

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DIGEST OF NORTH CAROLINA WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

The State Stream Sanitation Committee, created within the State Board of Health, has the primary function of controlling water pollution in the State. However, the State Board of Health, through its Division of Water Pollution Control, is the administrative agent of the Committee and carries out the provisions of the Act under the general policies established by the Committee (1957 Cum. Supp., secs. 143-213, 143-214). 1/

The State Board of Health, in addition to its general powers to provide for the health of the people, exercises jurisdiction over the water supplies and the sanitary disposal of sewage in the State (1957 Cum. Supp., Secs. 130-157-166).

II. ADMINISTRATIVE ORGANIZATION

State Stream Sanitation Committee

1. Composition and organization

The Committee consists of the Chief Engineer of the State Board of Health, ex officio, the Chief Engineer of the Water Resources and Engineering Division of the Department of Conservation and Development, ex officio, and seven members appointed by the Governor; two experienced in agriculture, one experienced in wildlife activities, two experienced in waste disposal problems of municipalities, and two experienced in industrial waste disposal. Appointed members serve for six year terms, except those first appointed. Ex officio members have all rights and powers except the right to vote. The Director of the Division of Water Pollution Control within the State Board of Health acts as the administrative officer and

1/ Citations in this digest refer to the General Statutes of North Carolina, and the 1957 Cumulative Supplement thereto, unless otherwise indicated.

Secretary of the Committee. A Chairman is elected from among the members of the Committee. The Committee meets regularly at least once every six months. Special meetings may be called by the Chairman and must be called by him at the request of two or more members. Five members constitute a quorum (Secs. 143-213, 143-214; 1957 Cum. Supp., secs. 143-213, 143-214).

2. Powers and duties

a) Classifying waters and setting standards

The Committee is authorized to classify the various waters of the State and adopt standards for each classification. The Committee must give prior notice of, and hold public hearings before classifying and setting standards for State waters. Upon completion of the hearings the Committee adopts and publishes its final action as part of its official regulations and specifies the effective date for the application of its action. (1957 Cum. Supp., sec. 143-215; sec. 143-215).

b) Issuance of permits and review of plans and specifications

After the effective date applicable to any watershed, a permit must be secured for the following purposes:

(1) Make any new waste outlet into the waters of such watershed;

(2) Construct or operate any new disposal system within such watershed;

(3) Alter the construction or the method of operation of any existing disposal system within such watershed;

(4) Increase the quantity of wastes discharged through any existing outlet or disposal system to an extent which would adversely affect the condition of the receiving water in relation to the standards applicable to such

water, or beyond such minimum limits as the Committee may prescribe, by way of general exemption from the provisions of this paragraph, by its official regulations;

(5) Change the nature of the wastes discharged through any existing outlet or disposal system in any way which would adversely affect the condition of the receiving water in relation to the standards applicable to such water. No permit is to be issued for the disposal of wastes into water used for a public water supply where the State Board of Health determines and advises the Committee that such waste disposal is sufficiently close to the source of the public water supply as to have an adverse effect thereon until complete plans and specifications have been submitted to and approved by the State Board of Health (1957 Cum. Supp., sec. 143-215.1).

The Committee is also authorized to issue certificates of approval of the voluntary installation of treatment works upon certain specified conditions (Sec. 143-215.2(g)).

c) Enforcement

The Committee is empowered, after the effective date applicable to any watershed, to issue, modify or revoke, a special order to any person who is responsible for causing or contributing to any pollution of water within such watershed. Such order may specify a time limit within which to achieve the desired results. Where the Committee concludes after investigation that no adequate or practicable method of disposal or treatment is known for the particular waste for which such person is responsible,

or where the cost of any such known pollution abatement is unduly burdensome in comparison with the pollution abatement results which can be achieved, or where a known method of disposal or treatment cannot be adopted because of financial inability (due to statutory restriction on borrowing power or otherwise), or where there is reason to believe that diligent research and experimentation is being carried on to such an extent as to justify postponement of the adoption of relatively inefficient known methods of disposal or treatment until further opportunity is given for the discovery of more effective methods, no such special order is to be issued against a person, or if issued, the time for compliance therewith by such person may be extended to the extent necessary (Sec. 143-215.2(b)).

No special order can be issued by the Committee (unless issued upon the consent of a person affected thereby) except after a hearing in accordance with the procedural requirements specified in the Act and with any applicable rule of procedure of the Committee (Sec. 143-215.2(c)).

Anyone aggrieved by a special order of the Committee may appeal to the Superior Court of the county where the order is effective within 30 days after such order has become final. Upon such an appeal, the Committee must send a certified transcript of the order or decision and the notice of appeal to the Superior Court. The trial in the Superior Court is held de novo as in other civil cases, and the appellant has the right to a jury trial (Secs. 143-215.2(d), 143-215.5).

When an order of the Committee to abate discharge of untreated or inadequately treated sewage and other waste is served upon a municipality or sanitary district, the governing board of such entity must, unless said order is reversed on appeal, proceed to provide funds, using any or all means necessary and available therefor by law, for financing the cost of

all things necessary for full compliance with such order; provided that nothing herein is to be construed to supersede or modify the provisions of the Local Government Act or of the Revenue Bond Act of 1938 with respect to approval or disapproval of bonds by the Local Government Commission and to the sale of bonds by said Commission. Before any court action is instituted to enforce any order issued against any person polluting the stream, the Committee must, if the municipal pollution is of such magnitude as to warrant consideration, take into consideration the probable time required by any municipality polluting the stream to abate its pollution (1957 Cum. Supp., sec. 143-215.2(f)).

It is a violation of the Act to do any of the things for which a permit is required, without such a permit, or to do any act in disregard of the terms of any permit, or to fail to comply with the terms of any special order issued by the Committee. Violation is a misdemeanor and carries a fine of not less than $50.00 nor more than $500.00 for each offense; provided, that if the violation is committed willfully, each week that the violation continues is a separate offense. Where a vote of the people is required to effectuate the intent and purpose of this Act by a municipality or other political subdivision and the vote on the referendum is against the means or machinery for carrying the same into effect, then this section does not apply to the elected officials or to any duly authorized appointed officials or employees of said municipality or political subdivision (Sec. 143-215.6).

d) Conduct of studies, investigations and research

The Committee is authorized to conduct scientific experiments, research and investigations to discover economical and practical corrective methods for waste disposal problems (Sec. 143-215.3(6)(b)).

e) Cooperation with other public and private agencies

The Committee is authorized to cooperate with and is delegated to act in conjunction with the State Board of Health in local administration of all matters covered by U.S. Public Law 845, and future legislation by Congress relating to water quality. It may also, with the approval of the Governor, consult with representatives of adjoining states relative to the establishment of regulations for the protection of waters of mutual interest; however, the approval of the General Assembly is required to make any such regulations binding (Sec. 143-215.3 (6) (c) (d)).

f) Administrative powers

The Committee is authorized to adopt rules and regulations, conduct investigations, classify waters and set standards for the same, hold hearings, issue orders, permits and certificates. It can institute court actions for the enforcement of provisions of the Act or for punishment for contempt. It may delegate such of its powers to one or more of its members or to any qualified employee of the State Board of Health, provided, that it cannot delegate to persons other than its own members the power to conduct hearings and to make decisions with respect to the classification of waters, the assignment of classifications, or the issuance of any special order for the abatement of existing pollution (Sec. 143-211-215.7).

3. Statement of policy; severability clause

It is the declared policy of the State that the water resources are to be prudently utilized in the best interest of the people. To achieve this purpose, the State must assume responsibility for the quality of the water resources. That the maintenance of the quality of the water resources requires the creation of an agency charged with this duty, and authorized to establish methods designed to protect the water requirement

for health, recreation, fishing, agriculture, industry, and animal life. Such agency is to establish and maintain a program adequate for present needs, and designed to care for future needs of the State (Sec. 143-211).

The Act contains a severability clause (Laws of N.C., 1945, sec.6).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

No one is permitted willfully to defile, corrupt, or make impure any public or private water supply. Violation is a misdemeanor (1957 Cum. Supp., secs. 130-164, 130-203).

No one is permitted to flow or discharge sewage above the intake into any source from which a public drinking water supply is taken, unless said sewage shall have been passed through some system of purification approved by the State Board of Health. Violation is a misdemeanor, and the continued discharge may be enjoined (1957 Cum. Supp., secs. 130-165, 130-203).

All schools, hamlets, villages, towns or industrial settlements which are not provided with a sewer system, and which are now located or may be hereafter located on the watershed of any public water supply must maintain and provide a reasonable system approved by the State Board of Health for collecting and disposing of all accumulations of human excrement within their respective jurisdiction or control. Violation is a misdemeanor (1957 Cum. Supp., secs. 130-166, 130-203).

The discharge of sewage or industrial waste into the waters of the following rivers or tributaries, after the dates indicated, to such an extent that the waters thereof become unsatisfactory for the best usage indicated for the same under classifications assigned thereto by the State Stream Sanitation Committee, or which results in the quality of such waters being in contravention of the water quality standards assigned to such

waters, is declared not to be reasonable use of such waters, and a public nuisance. Violation is a misdemeanor, and each day the violation continues is a separate offense:

Neuse River	January 1, 1962
Haw River	January 1, 1960
Tar-Pamlico River	January 1, 1962
Northeast Cape Fear River	January 1, 1962 (Laws of N.C.,

1957, Ch. 264, Laws of N.C., 1955, Chs. 552, 1014, 1139).

It is unlawful to place in any of the waters of the State any dynamite or any explosive substance whatever or any drug or poisoned bait for the purpose of taking, killing or injuring fish, except that the Department of Conservation and Development and the Wildlife Resources Commission may issue permits for the taking of fish for scientific purposes by means of drugs. Violation carries a fine of not less than $100.00 and imprisonment for not less than 30 days (1957 Cum. Supp., sec. 113-174.12).

Except as provided in section 113-174.12, it is unlawful to discharge any deleterious or poisonous substance inimical to fish inhabiting the waters of the State. Violation is a misdemeanor, carrying a fine or imprisonment in the discretion of the court (1957 Cum. Supp., sec. 113-174.14).

Except as provided in section 113-174.12, it is a misdemeanor for anyone to put any poisonous substance in the waters of the State for the purpose of catching, killing or driving off any fish (1957 Cum. Supp., sec. 113-244).

Except as provided in section 113-174.12, no one is permitted to place in any waters of the State any electricity, explosives or poisonous substances whatsoever for the purpose of catching, injuring or killing fish (1957 Cum. Supp., sec. 112-245).

It is a misdemeanor to throw into the channel of any of the navigable waters of the State, any fish offal, in any quantity that will be likely to hinder or prevent the passage of fish along such channel, or to throw into the waters known as the Frying Pan, tributary to the Great Alligator River, in Tyrell County, any fish offal in any quantities whatsoever (Sec. 113-246).

It is unlawful for anyone owning land adjacent to land used for dairy purposes or for grazing of milk cows, to dispose of any refuse, sewage or other deleterious matter in such a way as to pollute the water on the lands used for such dairy or grazing purposes. Violation is a misdemeanor which carries a fine of not more than $50.00 or imprisonment for not more than 30 days, or both. Each day the violation continues is a separate offense. This section does not apply to incorporated towns maintaining a sewer system (Sec. 14-382).